

## **Response to Comments**

**to**

### **Amendments to Rules and Regulations Governing the Administration and Enforcement of the RI Mercury Reduction and Education Act**

Adopted Pursuant to RIGL Chapter 23-24.9 (the 2001 Mercury Reduction and Education Act) and RIGL Chapter 42-17.1 and RIGL Chapter 42-35



*RI Department of Environmental Management*

*December 2005*

The following individuals submitted comments, verbally or in writing, at the November 29, 2005 public hearing held at the RI DEM in Providence or in direct written correspondence to the Department of Environmental Management between October 28, 2005 and December 1, 2005. Copies of all comments are on file and available for public review at the RI Department of Environmental Management, 235 Promenade Street, Providence, RI 02908.

<b>Eugenia Marks</b>	The Audubon Society of RI
<b>Sheila Dormody</b>	Clean Water Action (RI)

The following responses by the Department of Environmental Management address both specific individual comments and general categories of similar comments offered by two or more individuals.

**Comment:**

In 4.13 (the definition of laboratory chemical standards), the standard does not mean the substance but a concentration or percentage of the substance that serves as a criterion for action. It is suggested that the definition read:

***“Laboratory chemical standards”*** means the professionally accepted criterion for a material or substance whose chemical properties are sufficiently homogeneous and that are intended for use in the calibration of analytical instruments or validating measurement techniques related to the assignment of mercury values.” (emphasis added)

**Response:**

*This definition was added after a thorough search of the topic and discussions with colleagues at other state agencies involved in the regulation of Mercury. The intent of this section is to exempt these products from the phase out process. This exemption is strictly limited to the mercury product meant for calibration or measurement of mercury values and therefore should not be subject to further interpretation. RIDEM believes that the addition of the suggested wording may lead to confusion regarding the products that are included in this exemption. RI DEM has decided to keep the definition as originally proposed.*

**Comment:**

The definition of “motor vehicle” in Section 4.21 needs clarification. It is suggested that the definition be re-arranged to read as follows.

***“Motor vehicle”*** means every vehicle which is self-propelled, except vehicles moved exclusively by human power, an EPAMD, electric motorized bicycles and motorized wheelchairs (as defined in the RI Motor Vehicle Code R.I. General Laws § 31-1-3, or propelled by electric power obtained from overhead trolley wires, but not operated upon rails, ~~except vehicles moved exclusively by human power, an EPAMD, electric motorized bicycles and motorized wheelchairs (as defined in the RI Motor Vehicle Code R.I. General Laws § 31-1-3).~~

**Response:**

*RI DEM is interested in keeping the definition of a “motor vehicle” as close as possible to the statutory definition in the RI Motor Vehicle Code, RIGL §31-1-3. This will help minimize any confusion regarding what is categorized as a “motor vehicle” in RI. RI DEM has decided to keep the definition as originally proposed.*

**Comment:**

It is suggested that the phrase “for remelting purposes” be removed from the definition of a “scrap recycling facility” in Section 4.29 so as not to create a loophole should someone argue that the metal is sold on some other basis

**Response:**

*The regulatory definition of a “scrap recycling facility” is consistent with the statutory definition (RIGL §23-24.9-10(b)(2)). If it is determined that this definition needs to be changed, the statute will need to be amended.*

**Comment:**

Section 6.5 of the regulations (on mercury-added novelties) should be amended such that the exemption for novelties that contain mercury-added button cell batteries would only apply to novelty products with removable batteries.

**Response:**

*RI DEM has gone to great lengths to ensure that these regulations accurately reflect legislative intent. RI DEM feels that including this type of provision in the regulations would result in the Department going beyond the scope of its statutory authority. We feel this type of amendment can only be accomplished if the statute is amended.*

**Comment:**

In Section 10 (disposal ban), incorporate a “phase-in” for button cell batteries containing mercury if incineration or shredding becomes a method of waste disposal in Rhode Island.

**Response:**

*RI DEM has gone to great lengths to ensure that these regulations accurately reflect legislative intent. RI DEM feels that including this type of provision in the regulations would result in the Department going beyond the scope of its statutory authority. We feel this type of amendment can only be accomplished if the statute is amended.*

**Comment:**

RI DEM should complete these regulations as soon as possible so that these regulations shall be fully promulgated by January 1, 2006, so the initial mercury switch quarterly reports will be due by the end of March 2006.

**Response:**

*RI DEM intends to file these amended regulations with the Secretary of State’s Office early enough in December such that the regulations will be in effect by December 31, 2005.*

**Comment:**

Strengthen the requirements of manufacturer proposed collection systems for mercury containing products other than auto parts. Specifically, establish a minimum capture rate of 90% for manufacturer collection systems.

**Response:**

*RI DEM feels that including a provision in the regulations that mandates a particular capture rate for products other than auto mercury switches would result in the Department going beyond the scope of its statutory authority. We feel this type of amendment can only be accomplished if the statute is amended. It should be noted that RI DEM is required to approved manufacturer proposed collection programs, and prior to approval, the manufacturer is required to inform RI DEM (per Section 11.2.1.5) of its intended capture rate. If it is determined by RI DEM that the target rate is too low, then the Department has the authority to not approve the plan.*

*In addition, RI DEM disagrees with the approach of establishing one generalized capture rate that would apply to a very wide variety of mercury-added products (other than auto mercury switches). In order to be effective, capture rates should be tailored to a particular category of products.*

**Comment:**

Establish fees for the Department's review of any collection program which is not meeting its capture rate.

**Response:**

*RI DEM decided to establish a very basic set of fees during this particular rule making process. As such, only three (3) sets of fees were included in Section 13. If it is determined in the future that the Department is spending a considerable amount of time reviewing manufacturer collection plans which are not meeting their capture rates (per Section 11.2.1.5), then the Department will consider amending the regulations to adopt this type of fee.*

**Comment:**

RI DEM should be encouraged to strengthen the law to omit the statutory exemption for HID lamps per Section 9 (phase-out of mercury-added products).

**Response:**

*This is a comment on the law, not the proposed regulations. The RI Mercury Law (RIGL Chapter 23-24.9) would need to be amended to accomplish this.*

**Comment:**

RI DEM should be encouraged to strengthen the law increase the auto mercury switch capture rate beyond 70% in the later years of the program.

**Response:**

*This is a comment on the law, not the proposed regulations. The RI Mercury Law (RIGL Chapter 23-24.9) would need to be amended to increase the auto mercury switch capture rate beyond 70%.*

**Comment:**

RI DEM should take action - immediately - with regard to the RI Mercury Commission's recommendation to prevent mercury releases from dental offices across the state. Dental mercury is conspicuously absent from the current law although it is estimated to be the single largest source of mercury emissions to sewage treatment facilities.

**Response:**

*RI DEM agrees that this is an issue that warrants direct attention. However, RI DEM feels that a targeted solution outside of the realm of these regulatory amendments is the best approach. The Department is continuing to explore ways to address the problem of mercury releases from dental facilities.*